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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/773,193

Filing Date: January 31, 2001

Appellant(s): BABU ET AL.

J. B. Kraft
Registration No. 19,226
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 4, 2007 appealing from the Office action mailed January 29, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct, in that no amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The Examiner relied upon Dunn et al., U.S. Patent No. 5,659,596.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 7, 13, 19, and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation including "simultaneously acquiring items of location data" is not found in the specification. The specification discloses that multiple devices are accessed to determine a user's location but there is nothing that implies that those devices are accessed at the same exact time.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunn et al., U.S. Patent No. 5,659,596.

Dunn teaches the invention as claimed including a system for location of communication end users (see abstract).

Regarding claims 1, 13, and 25, Dunn teaches a method, information handling system, and computer-usuable medium, for handling location information regarding a mobile user having a plurality of associated location sources, comprising:

simultaneously acquiring items of location data regarding said user from said plurality of location sources (col. 22, lines 27-30, Dunn discloses location data acquired from local service offices (LSOs));

creating a collection of said location data regarding said user (col. 29, lines 43-47, Dunn discloses multiple prior locations reported and collected);

determining an expected most accurate location source of said plurality of associated location sources (col. 29, lines 39-57, Dunn discloses a last known location);

ranking items of location data in said collection to define the location of said user according to the expected most accurate location source of said plurality of associated

location sources (col. 29, lines 39-57, Dunn discloses sorting through location data and ranking based on time-stamps); and

updating said location data continuously with said defined location of said user (col. 22, lines 27-30, Dunn discloses location data continually updated; col. 29, lines 39-57).

Regarding claims 2, 8, 14, 20, and 26, Dunn teaches the method, information handling system, and computer-usable medium of claims 1, 7, 13, 19, and 25, further comprising:

filtering data in said collection to remove misleading data (col. 29, lines 47-57, Dunn discloses some location data results being discarded to waste management).

Regarding claims 4, 16, and 28, Dunn teaches the method, information handling system, and computer-usable medium of claims 1, 13, and 25, wherein:

said acquiring further comprises acquiring location data regarding more than one user (col. 22, lines 27-30, col. 16, lines 33-37, Dunn discloses the location of subscriber units and their users);

said creating further comprises creating collections of said location data regarding more than one user (col. 29, lines 43-47, col. 16, lines 33-37); and

said ranking further comprises ranking items in said collections regarding more than one user, according to the expected most accurate location source of each of said

plurality of associated location sources for each of said users (col. 29, lines 39-57, col. 16, lines 33-37).

Regarding claims 7 and 19, Dunn teaches a method and information handling system for handling location information regarding a mobile user having a plurality of associated location sources, comprising:

simultaneously acquiring items of location data regarding said user from said plurality of location sources (col. 22, lines 27-30);

ranking items of location data in a collection of said location data regarding said mobile user, according to an expected most accurate location source of said plurality of associated location sources (col. 29, lines 39-57); and

updating said location data continuously (col. 22, lines 27-30).

(10) Response to Argument

The Examiner summarizes the various points raised by the Appellant and addresses replies individually.

With regards to the 112, first paragraph, rejection, the Appellant argues that the rejection is improper and that “simultaneously acquiring items of location data” is implicitly taught in the specification.

In response, the Examiner respectfully disagrees:

In accordance In re Wands, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1998) the Examiner makes the following findings of fact in support of the rejection under 35 U.S.C. § 112, 1st paragraph:

- (1) Breadth of the claims: "Simultaneously" has not been clearly or implicitly taught in the specification in such a way as to enable one of ordinary skill in the art to determine that the multiple devices are accessed at the same time. The only thing that might be implicitly taught is that location data is acquired from multiple devices within recent times of each other; but there is nothing that suggests that the data is acquired simultaneously.
- (2) Level of one of ordinary skill in the art: Those of ordinary skill in the art would not know how to acquire the location data simultaneously. It is possible that the data can be acquired so quickly that it may appear, to a human observer, that it is being acquired simultaneously, this is in fact not the case.
- (3) Level of predictability in the art: It is not known how the simultaneous acquiring of data could take place without there being a distinct process described in the specification. Moreover, the nature of the hardware discloses that acquiring data simultaneously cannot be obtained. Thus it would not be predictable for the Appellant

to have implied the simultaneous acquiring of data when the specification was completed.

(4) Amount of direction provided by the inventor: The Appellant has provided no direction on how items of location data can be simultaneously acquired. Rather, Appellant has referred to vague portions of the specification that only disclose multiple devices that may be accessed to determine a user's location.

(5) Working examples: No working examples have been provided.

Moreover, the Appellant has merely argued that acquiring data simultaneously is implicit in the teaching of the invention without providing any evidence or explanation. The Appellant also states that there would be no advantage to acquiring location data unless it was acquired simultaneously. The Examiner disagrees as the data could be acquired almost instantaneously so as to appear to be simultaneous which would still provide the same purpose of the invention.

With regards to the arguments in reference to the 102 rejection, the Appellant argues that Dunn does not disclose multiple location sources or simultaneously acquiring data on the location of a mobile user from a plurality of location sources, and updating the user location by location data determined by the expected most accurate of these associated sources.

In response, the Examiner respectfully disagrees:

Simultaneously acquiring data on the location of a mobile user was not enabled in the specification and therefore was not considered for examination. The Appellants arguments are all based on the use of simultaneous data acquiring. Regardless, the Examiner would like to point out that Dunn does disclose location data acquired from local services offices, which serves as the claimed plurality of location sources where data is acquired from, as seen on column 22, lines 27-30. Also in that column and on column 29, lines 39-57, Dunn discloses location data continually being updated and sorting through location data and ranking based on time-stamps that points to a last known location; which serves as the expected most accurate location.

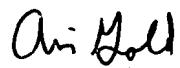
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Avi Gold



Conferees:

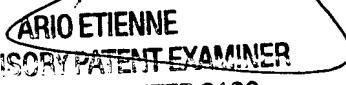


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